

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	Criminal No. 03-333-A
)	
v.)	
)	
ZHAN GAO,)	
)	
Defendant)	

STATEMENT OF FACTS

The United States and the defendant ZHAN GAO agree that had this matter proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt:

1. In the fall of 2000, the U.S. Customs Service received a complaint from a company which manufactures electronic parts and components used in radar, telecommunications and navigation systems. Some of the parts manufactured and sold by this company are controlled for export pursuant to the Export Administration Regulations and the International Traffic in Arms Regulations. The complaint was regarding orders for controlled parts placed by “Gail Heights,” of Technology Business Services (TBS), ostensibly for research work being done for a Northern Virginia university. The manufacturer had determined that “Gail Heights” and TBS did not work for the university and had therefore refused to fill the order for the controlled parts.

2. Further investigation into this complaint by the U.S. Customs Service and the Defense Criminal Investigations Service revealed that defendant, ZHAN GAO conducted business and held banking accounts under the names Technology Business Services, University

Laboratories, Chinese Scholars of Political Science and International Studies, Inc., CSPSIS, Inc., and Allways, Inc.

3. Bank records obtained for GAO and accounts she controlled showed wire transfers from various entities in the People's Republic of China (PRC), including the China National Electronics Import & Export Corporation (China National), an entity known to have connections to the PRC military, and to be involved in the acquisition of products and technology useful in the development of military and non-military applications. China National also conducts business under the name Incom Import & Export Company, and GAO's bank records showed wire transfers from China from this entity also.

4. A search of GAO's home produced documents which revealed that she had entered into contracts for controlled parts with various Chinese entities, including China National, Incom Import & Export Company and the Nanjing Institute of Radio Technology, and had shipped some of these items to the Nanjing SunSea Industry Corp. The Nanjing Research Institute of Electronics Technology (NRIET), also known as the 14th Institute, is involved in the development of radar systems for the military of the PRC. NRIET is one of the PRC's premier designers of aircraft radars and has designed most of the PRC's strategic and early warning radars. NRIET also conducts business under the names Nanjing SunSea Industry Corp. and Nanjing Institute of Radio Technology. NRIET is also involved in the development of civilian radar and air traffic control systems.

5. The Export Administration Act of 1979 regulates, among other things, the export from the United States of certain goods and technologies for national security reasons. The statute authorizes the President to restrict exports "which would make a significant contribution

to the military potential of any other country or combination of countries which would prove detrimental to the United States." 50 U.S.C App. § 2402(2)(A).

6. Under the Export Administration Act, the Secretary of Commerce is required to establish and maintain a Control List of goods and technologies that require export licenses. The Secretary of Commerce has promulgated regulations implementing the Act, known as the Export Administration Regulations. 15 C.F.R. §§ 730.1, et seq. These regulations include the Commerce Control List, 15 C.F.R. §774.1.

7. The Export Administration Regulations prohibit, for national security reasons, the export of certain goods and technologies to the People's Republic of China without authorization from the United States Department of Commerce, through a license obtained from its Bureau of Export Administration.

8. The International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., gives the President broad authority to regulate exports and other international transactions during times of national emergency. When the Export Administration Act expired on August 20, 1994, Executive Order 12924, 59 Fed. Reg. 43437 (1994), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act until November 13, 2000, when the Export Administration Act was reauthorized until August 20, 2001. See Pub. L. No. 106-508, 114 Stat. 2360 (2000). Executive Order 13222, 66 Fed. Reg. 44025 (2001), again continued the Export Administration Regulations in effect thereafter under the International Emergency Economic Powers Act.

9. From at least mid-2000 through at least January 2001,¹ in the Eastern District of Virginia and elsewhere, the defendant, ZHAN GAO, knowingly and willfully exported and caused to be exported from the United States to the People's Republic of China items which were designated, for national security reasons, on the Commerce Control List, without having first obtained from the Department of Commerce a license for such export or written authorization for such export, in violation of Title 50, United States Code Appendix, Section 2410(a), Title 50, United States Code, Sections 1702 and 1705(b), Title 15, Code of Federal Regulations, Sections 764.2(a), 764.2(b), and 764.2(d), and Executive Orders 12924 and 13222.

11. ZHAN GAO was, at all material times, an owner and operator of University Laboratories and Technology Business Services. Acting through University Laboratories and Technology Business Services, she purchased electrical components from various United States manufacturers and suppliers, including items designated on the Commerce Controls List. GAO mis-represented to various sellers of these items that she was affiliated with United States universities, that the items purchased by her were being used for research, and that the items would not be exported from the United States. ZHAN GAO knowingly exported Commerce Control List items to the People's Republic of China without having first obtained a license for export or written authorization for export as required by federal law. GAO obtained monies intended to be used for the purchase of electrical components, including items designated for national security reasons on the Commerce Control List, and for shipment of such items to the People's Republic of China, through funds that were transferred by wire from places outside the

¹ The Sentencing Guidelines applicable to offenses committed during this time period are those which became effective on November 1, 2000.

United States, including the People's Republic of China, to bank accounts controlled by GAO in New York and Virginia.

12. On or about July 12, 2000, ZHAN GAO caused TBS to enter into contract no. 00US11IDF52011883 with Incom Import & Export Company (which is identified in the contract as a subsidiary of China National Electronics Import & Export Corporation) in which TBS agreed to sell to Incom and ship to Nanjing, China, 80 Military Intel486 DX2 (MG80486DX2-50) microprocessors. Military Intel486 DX2 microprocessors have a temperature range of -55°C to +125°C, which allows this microprocessor to be used on aircraft, where it can be employed in navigation, digital flight control and weapons fire control systems, radar data processing, and airborne battle management systems. This microprocessor can also perform target identification and discrimination functions in missiles, allowing the missile to home in on and destroy its target. Military Intel486 DX2 microprocessors are designated for national security reasons on the Commerce Control List. This microprocessor may also have non-military applications, including applications in commercial aviation.

13. On or about July 27, 2000, ZHAN GAO caused TBS to order 40 MG80486 DX2-50 microprocessors from Rochester Electronics. On or about August 28, 2000, she caused TBS to change this order to 80 microprocessors.

14. On or about September 7, 2000, ZHAN GAO paid for this order by wire transfer from an account controlled by her at Bank of America in the name of University Laboratories, account no. 0041-2181-6386 (the "University Labs BOA savings account").

15. GAO caused Rochester to ship 80 MG80486 DX2-50 microprocessors on or about September 12, 2000, to TBS at an address in McLean, Virginia, which was GAO's home address.

16. On or about October 6, 2000, ZHAN GAO caused TBS to ship 80 MG80486 DX2-50 microprocessors to Nanjing, China. TBS's invoice for the microprocessors was addressed to Nanjing SunSea Industry Corp.

17. On or about January 10, 2001, Incom Import & Export Company wired payment for the 80 MG80486 DX2-50 microprocessors to an account controlled by GAO at Bank of America in the names of GAO and GAO's mother-in-law, Yu Xia Dong, (the "Gao/Dong BOA checking account"). The total amount of this wire, which included payment for the amplifiers and other components sold by the defendant, was \$539,296.00.

18. On or about January 11, 2001, GAO transferred \$540,000 from the Gao/Dong BOA checking account to an account controlled by her at Bank of America, held in the names of GAO and her husband, account no. 0041-1899-9562 (the "Gao/Xue BOA savings account").

19. On or about January 11, 2001, GAO transferred \$500,000 from the Gao/Xue BOA savings account to an account controlled by her at Bank of America, held in her name and that of XUE's mother, Yu Xia Dong, account no. 0041-1894-5561 (the "Gao/Dong BOA savings account").

20. On or about April 7, 2001, in the Eastern District of Virginia, the defendant, ZHAN GAO, a resident of McLean, Virginia, did willfully make and subscribe, and did aid and abet her husband, Dong Xue, in the making and subscribing of a joint U.S. Individual Income Tax Return for the calendar year 2000, which was verified by a written declaration, signed by Xue, that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which GAO did not believe to be true and correct as to every material matter in that the return reported no gross receipts or sales, when in fact, as GAO then and there well knew and believed, GAO had received gross receipts or sales.

Respectfully submitted,

PAUL J. McNULTY
UNITED STATES ATTORNEY

By:

James P. Gillis
Kathleen M. Kahoe
Assistant United States Attorneys

After consulting with my attorneys and pursuant to the plea agreement entered into this day between the defendant, ZHAN GAO, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

ZHAN GAO
Defendant

We are ZHAN GAO's attorneys. We have carefully reviewed the above Statement of Facts with her. To our knowledge, her decision to stipulate to these facts is an informed and voluntary one.

Mark J. Hulkower
Brian M. Heberlig
Attorneys for ZHAN GAO